

STATE PROPERTY TAX AUTHORITY AND LIMITS

BACKGROUND

The [HJ 35 Tax Study Committee](#) is studying property taxes and shows interest in whether property taxes are increasing and, if so, how they are increasing with property tax limits in place. Voted levies and special districts are often a part of this discussion, but there may be a lack of clarity about the distinction between the two.

Voted levies and special districts are often mentioned in discussions about whether property taxes are increasing.

This document provides an overview of the statutory authority to levy property taxes, limits on property taxes, and how taxing jurisdictions can exceed those limits. [Another document](#), prepared by Toni Henneman for the [Local Government Interim Committee](#), provides additional details about the statutes allowing creation of special districts, types of special districts, and how special districts raise revenue.

Together, the two documents are intended to contribute to an understanding about how taxing jurisdictions raise revenue from property taxes.

CONSTITUTION PROVIDES BROAD DIRECTION

The Montana Constitution does not directly address which entities may levy a property tax. [Article VIII, Section 3](#), requires the state to "appraise, assess, and equalize the valuation of all property, which is to be taxed in the manner provided by law." The language of [Article VIII, Section 4](#), indicates that entities other than the state may levy property taxes: "All taxing jurisdictions shall use the assessed valuation of property established by the state."

MANY STATUTES AUTHORIZE PROPERTY TAXES

The state levies property taxes by setting specific mill levies in statute. These state-level property taxes are all for educational purposes. State law also authorizes political subdivisions of the state to levy property taxes. These subdivisions include counties, consolidated city-county governments, cities and towns, school districts, and other districts authorized by statute and generally referred to as "special districts." Some statutes provide broad authority to levy property taxes for public and governmental purposes, while other laws allow property taxes for specific purposes. A table at the end of this document lists the purposes for which taxing jurisdictions may levy property taxes. [This report](#) includes information specific to special districts.

A taxing jurisdiction calculates the mill levy based on the jurisdiction's adopted budget. In many cases, state law limits the property tax revenue that may be raised. Special districts may levy mills or may assess fees in other ways. See [this report](#) for more information.

MOST TAXING AUTHORITY IS PERMISSIVE

Most authority to levy property taxes is "permissive," which means that the governing body of the district can impose the property tax without submitting the question of whether to levy the tax to the voters. This does not mean, however, that a local government can impose an unlimited mill levy.

PROPERTY TAX LIMITS MAY CONTRIBUTE TO CONFUSION

Although state law allows local governments to levy property taxes for many purposes, the sum of the revenue raised is subject to a total limit. Section [15-10-402](#), MCA, limits property taxes levied by a taxing jurisdiction to 1996 levels. However, that section of law is subject to [15-10-420](#), MCA. Section [15-10-420](#), MCA, expands the property tax limit by allowing a governmental entity that is authorized to levy mills to impose a mill levy that generates the amount of property taxes actually assessed in the prior year plus one-half of the rate of inflation for the prior 3 years.

This limit does not apply to:

- the statewide education mills;
- school districts;
- judgment levies;
- levies to repay taxes under protest;
- an emergency levy;
- a levy for support of a study commission;

- a levy for support of a newly established regional resource authority;
- a levy for certain local government contributions to group benefits;
- a levy for transferring records upon relocation of a county boundary;
- a levy used to fund the sheriffs' retirement system; or
- a levy in support of an airport authority in existence before May 7, 2019.

The existence of this limit and the fact that it applies to some jurisdictions and not others and to some mill levies and not others may create confusion about local government property tax authority. Its important to note that nonstate school funding, which accounted for 42% of property tax revenue in 2019, is not subject to the property tax limit.¹

VOTERS CAN ALLOW PROPERTY TAXES ABOVE THE LIMIT

Section [15-10-425](#), MCA, allows taxing jurisdictions to submit to the electors the question of:

- imposing a new mill levy;
- increasing a mill levy required to be submitted to the electors; or
- increasing the mill levy limit authorized under [15-10-420](#), MCA.

This voter approval of a property tax levy is different than the creation of a special district (though a special district could use this law to impose or increase a mill levy). The two may be conflated, however, because both may allow a taxing jurisdiction to raise property tax revenue outside of the limit allowed under [15-10-420](#), MCA.

A special district is a new taxing jurisdiction with a governing body separate from the city or county and boundaries that may include parts of a city or county, or both. A taxing jurisdiction that seeks a new or increased levy under 15-10-425, whether it is a city, a county, a school district, or a special district, retains decisionmaking powers related to the mill levy and expenditure of associated revenue.

Even if a taxing jurisdiction is not levying the maximum mill levy allowed under [15-10-420](#), MCA, submitting to voters the question of whether to impose a new or increased mill levy could serve one or both of the following purposes:

1. Allow a vote on whether to levy property taxes for a specific purpose; and/or

¹ Montana Department of Revenue, [Biennial Report, July 1, 2016 - June 30, 2018](#), p. 180.

State Property Tax Authority and Limits

2. Give the taxing jurisdiction flexibility by funding a specific purpose with a voted levy, which may allow the authority under [15-10-420](#), MCA, to be used for other, nonvoted purposes.

STATE LAWS ALLOWING PROPERTY TAX LEVIES			
Purpose	Authority for Levy Amount	Subject to limit in 15-10-420? ²	MCA
State			
Elementary equalization - 33 mills	State law	May not levy above levy established in law	20-9-331
High school equalization - 22 mills	State law		20-9-333
State equalization - 40 mills	State law		20-9-360
<ul style="list-style-type: none"> Montana University System - 6 mills Approved by electorate Nov. 6, 2018 Terminates Dec. 31, 2028 	State law - legislative referendum		15-10-109
County			
Creation of special warrant district when counties consolidate	Permissive	Yes	Title 7, chapter 2, part 27
Cost of certified copies associated with alteration of county boundaries	Permissive, 5 years maximum	No	7-2-2807
County maintenance of property within a newly incorporated city or town	Permissive	Yes	7-2-4111
County levy for indebtedness of disincorporated city or town	Permissive	No	7-2-4918
County public or governmental purposes necessary to defray current expenses or required for special or local statutes	Permissive	Yes	7-6-2501
County district court costs	Permissive	Yes	7-6-2511
Health care facility expenses	Permissive	Yes	7-6-2512
Law enforcement services and maintenance of county detention centers	Permissive	Yes	7-6-2513
All-purpose levy for county public or governmental purposes	Permissive	Yes	7-6-2521 , 7-6-2522 , 7-6-2524

² An entry of "Yes*" means that a voted levy is generally subject to 15-10-420 but the wording of the ballot question could provide otherwise.

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
County, Continued			
Any public or governmental purpose not prohibited by law. Non-exclusive list of purposes for which no statutory reference is provided includes: <ul style="list-style-type: none"> • Museum, facility for arts and humanities, collection of exhibits or museum district • Prevention programs, including substance abuse programs • Forest or grassland hazardous fuels reduction projects 	Permissive	Yes	7-6-2527
General obligation bonds	Voted	No	7-7-2206 , 7-7-2264 , 7-7-2265
Refunding general obligation bonds	Voted	No	7-7-2303
County roads and bridges	Permissive	Yes	7-14-2101
Public highways	Permissive	Yes	7-14-2501
Bridges in the county, including within a municipality	Permissive	Yes	7-14-2502
Bridges required to be constructed and maintained by the county in any city or town	Permissive	Yes	7-14-2503
Ferries	Permissive	Yes	7-14-2801
Combined ferry and bridge fund	Permissive	Yes	7-14-2807
Parks, cultural facilities, county-owned civic center, youth center, recreation center, recreational complex	Permissive unless 15% of resident taxpayers request a vote	Yes	7-16-2102

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
County, Continued			
Combined levy and special district fees for county fair activities, county parks, cultural facilities, county-owned civic center, youth center, recreation center, or recreational complex	Permissive unless 15% of resident taxpayers request a vote	Yes	<u>7-16-2109</u>
Extension work in agriculture and home economics	Permissive	Yes	<u>7-21-3203</u>
Insect pest extermination	Permissive	Yes	<u>7-22-2306</u>
Vertebrate pest management	Permissive	Yes	<u>7-22-2512</u>
Search and rescue	Voted	Yes	<u>7-32-235</u>
Firefighting equipment and firefighter wages	Permissive	Yes	<u>7-33-2209(1)</u>
Volunteer firefighter disability income insurance or workers' compensation	Voted	Yes*	<u>7-33-2209(3)</u>
Bonds for a health care facility	Voted	Yes	<u>7-34-2417</u> , <u>7-34-2418</u>
Veterans' cemetery	Permissive	Yes	<u>7-35-2205</u>
Sheriff's retirement employer contribution	Permissive	No	<u>19-7-404</u>
Adult literacy program	Permissive	Yes	<u>20-7-714</u>

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
County, Continued			
Public and indigent assistance including: <ul style="list-style-type: none"> • Assistance for food, clothing, shelter, transportation, and medical assistance • Burial, entombment, or cremation • Job search, work-for-assistance, job training, and employment programs • Health care, preventative care, and wellness programs 	Permissive	Yes (though no reference to 15-10-420)	<u>53-3-115, 53-3-116</u>
Developmental disabilities facilities within or outside county	Permissive	Yes	<u>53-20-208</u>
Community mental health center or licensed mental health center	Permissive	Yes	<u>53-21-1010</u>
Purebred livestock shows and sales	Permissive	Yes	<u>81-8-504</u>
Weather modification fund	Permissive	Yes	<u>85-3-422</u>
Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties			
<ul style="list-style-type: none"> • Vocational-technical education - 1.5 mills • Deposited in General Fund and used for Board of Regents budgets 	State law	May not increase above mill levy established in law	<u>20-25-439</u>

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
City or Town			
General and special public or governmental purposes	Permissive	Yes	7-1-4123 , 7-6-4401 , 7-6-4406 , 7-6-4421
Property within a city or town annexation district	Permissive, 10 years maximum	Yes	7-2-4625
Bonded indebtedness of land excluded from a city or town	Permissive	No	7-2-4810
Government services, facilities, or capital projects in excess of levy allowed by 15-10-420	Voted	Yes*	7-6-4431
Special taxes for municipal and administrative purposes when the indebtedness equals or exceeds the amount authorized in statute	Permissive	Yes	7-6-4438
All-purpose mill levy in lieu of the multiple levies authorized by the statutes of Montana	Permissive	Yes	7-6-4451
Extraordinary levies for bonded indebtedness, judgments, tax protest refunds, or special improvement district revolving funds	Permissive	Yes	7-6-4453
General obligation bonds	Voted	No	7-7-4265 , 7-7-4266
Port authority	Permissive	Yes	7-14-1131
Transportation service	Permissive	Yes	7-14-4404
Deficiency in reserve for payment of revenue bonds for parking commission	Permissive	Yes	7-14-4644
Public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museum	Permissive	Yes	7-16-4105
Provision of band concerts	Permissive	Yes	7-16-4113
Group insurance for police officers	Permissive	Yes	7-32-4117

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
City or Town, Continued			
Disability insurance or workers' compensation for volunteer firefighters in second class cities	Voted	Yes*	7-33-4109
Support and equipment for volunteer fire departments	Permissive	Yes	7-33-4111 (1)
Disability insurance or workers' compensation for volunteer firefighters	Voted	Yes	7-33-4111 (2)
Group insurance for firefighters in first-class and second-class cities	Permissive	Yes	7-33-4130
Police retirement employer contribution	Permissive	Yes	19-9-209
Firefighter retirement employer contribution	Permissive	Yes	19-13-214
Firefighter retirement sound funding	Permissive	Yes	19-18-504
Police retirement in third-class cities that did not join statewide police reserve fund	Permissive	Yes	19-19-301
County, City, or Town			
Juvenile detention programs	Permissive	Yes	7-6-502
Volunteer firefighter disability income insurance	Voted	Yes*	7-6-621
Transportation services for senior citizens and persons with disabilities	Permissive	Yes	7-14-111
Activities for the elderly	Permissive	Yes	7-16-101
Licensed day-care center employee programs and training	Permissive	Yes	7-16-2108 , 7-16-4114
Payment of bonds for smoke abatement	Voted	No	7-31-116
Ambulance service	Permissive	Yes	7-34-102

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
County, City, or Town, Continued			
City-county board of health	Permissive	Yes	50-2-111
Airport or ports	Permissive	Yes	67-10-402
Economic development	Permissive or voted	Yes	90-5-112
Consolidated Local Government			
Levy all taxes that counties, cities, and towns are authorized to levy	Permissive	Yes	7-3-1104 , 7-3-1203
Debt of municipality or district upon consolidation	Permissive	No	7-3-1310
Special districts for special services	Permissive	Yes	7-3-1311
Indebtedness of municipality or district	Permissive	Yes	7-3-1313
Indebtedness of prior city or town upon adoption of single municipal district	Permissive	Yes	7-3-4312
Political Subdivision Other than a School District			
Insurance, deductible reserve fund, self-insurance reserve fund, and principal and interest on bonds for self-insurance or a deductible reserve fund	Permissive	Yes	2-9-212(1)
Group hospitalization, health, medical, surgical, life insurance, flexible spending account benefits, and payments in lieu of group benefits for officers and employees of the subdivision	Permissive	Amount in excess of base not subject to limit	2-9-212(2)

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
Taxing Jurisdiction Other than the State			
Judgment levy	Permissive	No	<u>2-9-316</u> , <u>7-6-4015</u> , <u>7-7-2202</u>
Tax protest refund	Permissive	No	<u>15-1-402</u>
Local Government Study Commission			
Funding for local government study commission	Permissive	No	<u>7-3-184</u>
Regional Resource Authority			
Public or governmental purposes	Permissive	No	<u>7-10-115</u>
Community College District			
Funding a community college district	Voted	Yes	<u>20-15-311</u> , <u>20-15-313</u>
Services offered by a community college service region	Voted	Yes	<u>20-15-241</u> , <u>20-15-314</u>
Adult education levy	Permissive	Yes	<u>20-15-305</u> ,
Emergency budget of community college district	Permissive	No	<u>20-15-326</u>

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
School: Countywide			
Retirement fund levy for personnel who are members of TRS or PERS	Based on net retirement fund levy requirements	No	<u>20-9-501</u>
County transportation reimbursement	Based on county transportation net levy requirements	No	<u>20-10-146</u>
School: K-12			
Tuition fund	Permissive	No	<u>20-5-324</u>
Tuition debt when a district ceases to exist	Permissive	No	<u>20-6-413</u>
<ul style="list-style-type: none"> • Transformational learning programs for which the district receives a transformational learning aid payment • Levy amount may not exceed 100% of the transformational learning aid payment 	Permissive	No	<u>20-7-1602</u>
Requires school trustees to adopt a budget and determine levies annually by Aug. 25	Based on district budget	No	<u>20-9-131</u>
Requires county superintendent to compute each district's general fund levy requirements	Based on general fund net levy requirement	No	<u>20-9-141</u>

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
School: K-12, Continued			
Funding for a budget amendment adopted by a board of trustees under 20-9-161 when a district does not have sufficient funds to finance the budget amendment	Permissive	No	20-9-168
Funding for an elementary school with ANB of 9 or fewer for 2 consecutive years that is not approved as an isolated school	One-half of direct state aid	No	20-9-303
Adoption of over-BASE budget	Voted	No	20-9-308 , 20-9-353
Joint construction of a facility with another district	Permissive	Yes	20-9-404
Oil and natural gas revenue bond deficiency	Voted	No	20-9-437
General obligation bond debt service	Voted	No	20-9-439
Payment of tax protest refund	Permissive	No	20-9-471
Building reserve fund for construction, equipping, or enlarging of school buildings or for purchasing land	Voted	No	20-9-502 (2)
School major maintenance and repairs	Permissive, limited to 10 mills	No	20-9-502 (3)
Transition costs related to opening a new school, closing a school, replacing a school building, consolidation or annexation of another district, expansion of an elementary district into a K-12 district	Voted, 6 years maximum	No	20-9-502 (4)
Improvements to school and student safety and security	Voted	No	20-9-502 (5)

State Property Tax Authority and Limits

Purpose	Authority for Levy Amount	Subject to limit in 15-10-420?	MCA
School: K-12, Continued			
Nonoperating district nonoperating fund and debt service fund	Permissive	No	<u>20-9-506</u>
Technology acquisition and depreciation	Voted, 10 years maximum	Yes	<u>20-9-533</u>
School flexibility fund	Voted, may not exceed 25% of district's allocation from the school flexibility account under 20-9-542	No	<u>20-9-544</u>
Joint interstate schools contract	Permissive	No	<u>20-9-705</u>
Transportation fund	Permissive	No	<u>20-10-144</u>
Bus depreciation reserve fund	Permissive	No	<u>20-10-147</u>
School: Non-K-12			
Adult education program operated by a school district	Permissive	No	<u>20-7-705</u>